

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

LEAGUE OF WOMEN VOTERS	)	
OF MICHIGAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:17-cv-14148
	)	
JOCELYN BENSON, in her official	)	
capacity as Michigan Secretary of	)	
State, et al.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING PLAINTIFFS’ MOTION FOR LEAVE TO TAKE AND  
PRESENT TRIAL DEPOSITIONS (ECF No. 171)**

Before the Court is Plaintiffs’ Motion for Leave to Take and Present Trial Depositions (ECF No. 171). Plaintiffs argue that due to the unavailability of several of their witnesses, they should be allowed to take *de bene esse* depositions of up to ten unnamed individuals and present these depositions at trial in lieu of live trial testimony.

Pursuant to Rule 32(a)(4), a party seeking to authorize the use of a deposition in lieu of live testimony must demonstrate that there are “exceptional circumstances” that would warrant granting that request. *Allgeier v. United States*, 909 F.2d 869, 876 (6th Cir. 1990). This requirement will only be satisfied when a party’s “witness is shown to be unavailable or unable to testify because he is dead; at a great distance; aged, ill, infirm, or imprisoned; or unprocurable through a subpoena.” *Id.* The Court finds that Plaintiffs

have not met their burden of showing there are “exceptional circumstances” as contemplated by Rule 32(a)(4) because they have failed to address the unavailability of their witnesses with any specificity. Plaintiffs have not revealed the identity of any witness who might be unavailable to testify at trial, nor have they explained why any such witness cannot testify before the Court in person. Should Plaintiffs receive information regarding a specific witness that they believe renders that witness unavailable under Rule 32(a)(4), Plaintiffs may file an appropriate motion at that time.

Therefore, Plaintiffs’ Motion for Leave to Take and Present Trial Depositions (ECF No. 171) is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated: January 18, 2019

/s/ Denise Page Hood

Signed for and on behalf of the panel:

HONORABLE DENISE PAGE HOOD  
United States District Judge

HONORABLE ERIC L. CLAY  
United States Circuit Judge

HONORABLE GORDON J. QUIST  
United States District Judge